



# California Fair Political Practices Commission

January 29, 1990

Carol Korade  
City Attorney  
City of Alameda  
Office of City Attorney, Room 314  
City Hall  
Santa Clara Avenue at Oak Street  
Alameda, CA 94501

Re: Your Request for Advice  
Our File No. A-89-715

Dear Ms. Korade:

This is in response to your letter requesting advice regarding the responsibilities of the members of the finance committee for the City of Alameda pursuant to the disclosure requirements of the conflict-of-interest provisions of the Political Reform Act (the "Act").<sup>1/</sup>

## QUESTION

Are the members of the finance committee for the City of Alameda "public officials who manage public investments" subject to the disclosure and disqualification provisions of the Act?

## CONCLUSION

Members of the finance committee for the City of Alameda are public officials if the committee's substantive recommendations are regularly approved without significant amendment or modification by the city council. In addition, if the members of the committee are public officials who make substantive recommendations concerning the management of public funds which are usually followed, we would conclude that the members of the finance committee are public officials that manage public investments.

---

<sup>1/</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

### FACTS

The City of Alameda has created an advisory finance committee with unsalaried volunteers as members, to advise the city council on numerous financial issues that concern the city. You stated that the city council frequently follows the recommendations of the finance committee. You also stated that the responsibilities of the committee include the review and recommendation of changes to city policy concerning revenue, expenditures, the capitol improvement program and the long-range financial planning of the city. In addition, the committee assists staff in establishment of a cost allocation system and the education of the city council and others on financial matters.

### ANALYSIS

The Political Reform Act was enacted by the people of the State of California by initiative in 1974. The purpose for the disclosure and disqualification provisions of the Act was to ensure that public officials, whether elected or appointed, would perform their duties in an impartial manner, free from bias caused by their own economic interests or the economic interests of persons who have supported them. (Section 81001(b).)

In furtherance of this goal, the Act requires every public official to disclose all his or her economic interests that could foreseeably be affected by the exercise of the official's duties. (Sections 81002(c), 87200-87313.) Generally the Act distinguishes from those persons who must disclose all their economic interests (Section 87200) and those who may have tailored disclosure obligations in a local conflict of interest code.

Prior to January 1, 1990, city treasurers and public officials who manage public investments were not included in Section 87200. However, if such persons were "public officials" as defined in the Act, they were required to be designated in the agency's conflict of interest code and were subject to the disclosure and disqualification requirements of that code. Effective January 1, 1990, Section 87200 was amended by Assembly Bill No. 941 (Ch. 403, Stats, 1989) (copy enclosed) to include city treasurers and public officials who manage public investments. Consequently, if members of Alameda's Finance Committee are "public officials who manage public investments," they are required to disclose certain statutorily specified investments, real property interests, sources of income and sources of gifts.

A "public official" is defined in Section 82048 and Regulation 18700(a)(1) (copy enclosed) as follows:

(a) "Public official at any level of state or local government" means every natural person who is

a member, officer, employee, or consultant of a state or local government agency.

(1) "Member" shall include, but not be limited to, salaried or unsalaried members of boards or commissions with decision-making authority. A board or commission has decision-making authority whenever:

(A) It may make a final governmental decision;

(B) It may compel a governmental decision; or it may prevent a governmental decision either by reason of an exclusive power to initiate the decision or by reason of a veto which may not be overridden; or

(C) It makes substantive recommendations which are, and over an extended period of time have been, regularly approved without significant amendment or modification by another public official or governmental agency.

According to the information you have provided, members of the finance committee recommend policy changes for the city with respect to revenue and expenditures, review and recommend changes to Alameda's long range financial planning, review and recommend changes to the city's capital improvement program, educate the city council on financial matters, identify funding sources and assist staff in establishing a cost allocation system. You also stated that the recommendations are presented to the city council without significant intervening review. Clearly, any of these recommendations are such that they may affect the committee members' economic interests.

In addition, you stated that the committee is advisory in nature. However, you also stated that the city council frequently follows the recommendations of the committee. Since the committee's recommendations are regularly approved without significant amendment or modification by the city council, we would conclude that the members of the finance committee are public officials under the Act and are subject to the Act's disclosure and disqualification provisions. Based upon the information you have provided about the relationship between the finance committee and the city council, this appears to be the case. Should you have additional information which indicates otherwise, please forward it to us and we will consider it.


Finally, since the committee makes substantive recommendations concerning the management of public funds which are usually followed, we would conclude that the members of the finance committee are public officials who manage public investments.

Consequently, the members of the Alameda Finance Committee must file Form 721 this year. Those persons who are current filers under the city's conflict of interest code will begin filing Form 721 next year.

If any further questions regarding this matter, please feel free to contact me at (916) 322-5901.

Sincerely,

Kathryn E. Donovan  
General Counsel

By:  John W. Wallace  
Counsel, Legal Division

KED:JWW:plh

Enclosures



# California Fair Political Practices Commission

February 5, 1990

Carol Korade  
City Attorney  
City of Alameda  
Office of City Attorney, Room 314  
City Hall  
Santa Clara Avenue at Oak Street  
Alameda, CA 94501

Re: Your Request for Advice  
Our File No. A-89-715, Follow-Up

Dear Ms. Korade:

This is in response to your request for additional assistance regarding the disclosure provisions of the Political Reform Act (the "Act").<sup>1/</sup> Your request relates to Advice Letter No. A-89-715 (copy enclosed), dated January 29, 1990.

In that letter we advised you that the members of the Alameda Finance Committee were public officials and therefore subject to the disclosure requirements of the Act. This was based on our understanding that the finance committee's substantive recommendations were regularly approved without significant amendment or modification by the city council.

In your request for follow-up advice you provided supplemental information about the history of the finance committee. You stated in your letter of January 30, 1990 that the finance committee has only been in existence since May of 1989 and has actually only made four recommendations to the city council. Two of the recommendations were accepted by the city council and forwarded to the public utility board, which subsequently rejected the recommendations. The third recommendation was also accepted by the city council and forwarded to the golf commission for evaluation. That evaluation is still in progress. The fourth recommendation was analyzed by a consultant to the city and was subsequently adopted. In addition, you stated that the information you provided in connection with your initial request was in fact prospective and was based on an expectation

---

<sup>1/</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

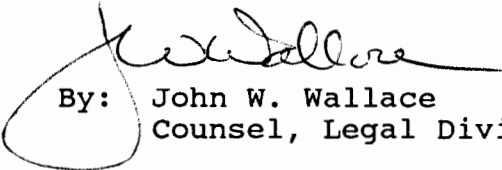
that the decisions of the finance committee would be regularly followed without change.

Based on these additional facts, we conclude that the finance committee is an advisory body at this time and that the committee's members are not "public officials" as defined in the Act. Consequently, members of the finance committee are not subject to the disclosure and disqualification provisions of the Act. However, if in the future the committee's substantive recommendations should be regularly approved without significant amendment or modification by the city council over an extended period of time, then the members of the committee will qualify as public officials within the meaning of Regulation 18700(a)(1)(C) (copy enclosed). At that time the disclosure and disqualification requirements of the Act would apply.

I trust this clarifies application of the law to your situation. Should you require further advice as the finance committee continues operation, please do not hesitate to contact me for follow-up advice at (916) 322-5901.

Sincerely,

Kathryn E. Donovan  
General Counsel



By: John W. Wallace  
Counsel, Legal Division

KED:JWW:plh

Enclosures



# California Fair Political Practices Commission

January 8, 1990

Carol Korade  
City Attorney  
City Hall, Room 314  
Santa Clara Avenue at Oak Street  
Alameda, CA 94501

Re: Letter No. 89-715

Dear Ms. Korade:

Your letter requesting advice under the Political Reform Act was received on December 27, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact John Wallace an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Kathryn E. Donovan  
General Counsel

KED:plh



FEB 2 9 19 AM '90

January 30, 1990

VIA FACSIMILE

John S. Wallace, Counsel  
Legal Division  
California Fair Political  
Practices Commission  
428 J Street, Suite 800  
P. O. Box 807  
Sacramento, CA 95804-0807

Re: Request for Advice, Your File No. A-89-715

Dear Mr. Wallace:

Thank you for your response to my request for advice. This letter is intended to provide you with supplemental information to assist you in reevaluating your conclusion that members of the Finance Committee of the City of Alameda are subject to the disclosure and disqualification provisions of Government Code Sections 81000-91015 and required to file Form 721.

The Finance Committee has only been in existence since May of 1989. They have made four recommendations, which have been forwarded to the City Council. Two of these recommendations were accepted by the City Council and forwarded to the Public Utility Board. The Public Utility Board subsequently decided that they were not going to follow the recommendation of the Finance Committee.

Another recommendation of the Finance Committee was accepted by the City Council and forwarded to the Golf Commission for evaluation. They are still in process of evaluating the Finance Committee's recommendation.

The fourth recommendation was forwarded to the City's consultant for inclusion in a report. The City Council adopted this report and Finance Committee recommendation. In addition, there are two Finance Committee recommendations on the next City Council agenda.

---

Office of the City Attorney, Room 314

City Hall  
Santa Clara Avenue at Oak Street - 94501  
415.748 4544



John W. Wallace, Esq.  
Page 2  
January 30, 1990

The previous information provided was that the City staff "expected" that the Committee's recommendations would be frequently followed by the City Council. It is urged that you determine that there is insufficient statistical information to conclude that the Committee's recommendations are regularly approved without significant amendment or modification by the City Council.

I propose that this request for advice be resubmitted in approximately November, 1990 and include statistical data which would provide the past track record of City Council's approval of the Finance Committee's recommendations. If you concur, I will resubmit the request for advice in November.

It is my understanding that due to the recent receipt of your opinion and this request for reconsideration, that the members of the Finance Committee will not be penalized for failure to file their form 721 on January 31, 1990. If in fact, you determine that they need to file Form 721, there will be a two-week grace period granted in which to file. It is my further understanding that you will attempt to promptly respond to this request for reconsideration.

Thank you for our continued assistance and cooperation.

Very truly yours,



Carol A. Korade  
City Attorney

cc: Vince Kelly, Finance Committee Member  
Art McKee, Finance Committee Member  
Don Roberts, Finance Committee Member  
Gary L. Thomas, Finance Committee Member  
John Barni, Sr., Finance Committee Member  
Diane Felsch, City Clerk  
Zenda James, Finance Director  
Bill Norton, City Manager



FPPC  
Dec 27 12 40 PM '89

December 26, 1989

Legal Division  
Fair Political Practices Commission  
428 J Street, Suite 800  
Sacramento, CA 95814

RE: REQUEST FOR LEGAL ADVICE

As you are aware, Government Code Section 87200 has been amended to include City officials who manage the investment of public funds. A question has arisen about whether the members of the Finance Committee for the City of Alameda are within the scope of the new regulations.

The purpose of the Finance Committee is to serve the City Council in an advisory capacity. They have the following responsibilities:

- 1) Recommend policy changes on revenue and expenditures, modifying existing policies when applicable.
- 2) Review and recommend changes to the long-range financial planning of the City.
- 3) Review and recommend changes to the Capital Improvement Program.
- 4) Educate the City Council and others on financial matters.
- 5) Identify funding and assist staff to establish a cost allocation system.

---

Office of the City Attorney, Room 314

City Hall  
Santa Clara Avenue at Oak Street - 94501  
415.748 4544

The members of the Finance Committee are non-paid volunteers. It is my understanding that the City Council frequently follows the recommendations of the Finance Committee. If these persons are within the scope of the new legislation, they must file the Form 721 no later than January 31, 1990. Consequently, it is requested that you provide a response as soon as possible.

Thank you for your assistance.

Very truly yours,

  
Carol Korade  
City Attorney

CK/eb

cc: Bill Norton  
Zenda James  
Diane Felsch  
Vince Kelly, Finance Committee Member  
Art McGee, Finance Committee Member  
Don Roberts, Finance Committee Member  
Gary L. Thomas, Finance Committee Member  
Don Gehb, Finance Committee Member



CITY ATTORNEY'S OFFICE  
CITY OF ALAMEDA  
2263 SANTA CLARA AVENUE  
ALAMEDA, CA 94501

TELEFAX # (415) 748-~~4548~~ 4504

\*\*\*\*\*

TELEFAX COPIER COVER LETTER

TO: JOHN S. WALLACE, ESQ., COUNSEL  
FAIR POLITICAL PRACTICES COMMISSION  
916-327-2026

FROM: CAROL A. KORADE, CITY ATTORNEY

Total Number of Pages Sent 3  
(cover letter included)

IF YOU DO NOT RECEIVE ALL OF THE PAGES, PLEASE CALL US AS SOON AS POSSIBLE:

City Attorney's Office  
(415) 748-4544

Ask for: Connie

SPECIAL INSTRUCTIONS:

Date Sent: January 30, 1990

By: Connie

## City of Alameda California



January 30, 1990

VIA FACSIMILE

John S. Wallace, Counsel  
Legal Division  
California Fair Political  
Practices Commission  
428 J Street, Suite 800  
P. O. Box 807  
Sacramento, CA 95804-0807

Re: Request for Advice, Your File No. A-89-715

Dear Mr. Wallace:

Thank you for your response to my request for advice. This letter is intended to provide you with supplemental information to assist you in reevaluating your conclusion that members of the Finance Committee of the City of Alameda are subject to the disclosure and disqualification provisions of Government Code Sections 81000-91015 and required to file Form 721.

The Finance Committee has only been in existence since May of 1989. They have made four recommendations, which have been forwarded to the City Council. Two of these recommendations were accepted by the City Council and forwarded to the Public Utility Board. The Public Utility Board subsequently decided that they were not going to follow the recommendation of the Finance Committee.

Another recommendation of the Finance Committee was accepted by the City Council and forwarded to the Golf Commission for evaluation. They are still in process of evaluating the Finance Committee's recommendation.

The fourth recommendation was forwarded to the City's consultant for inclusion in a report. The City Council adopted this report and Finance Committee recommendation. In addition, there are two Finance Committee recommendations on the next City Council agenda.

---

Office of the City Attorney, Room 314

City Hall  
Santa Clara Avenue at Oak Street • 94501

John W. Wallace, Esq.

Page 2

January 30, 1990

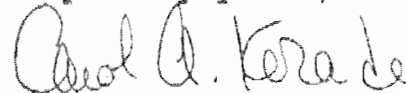
The previous information provided was that the City staff "expected" that the Committee's recommendations would be frequently followed by the City Council. It is urged that you determine that there is insufficient statistical information to conclude that the Committee's recommendations are regularly approved without significant amendment or modification by the City Council.

I propose that this request for advice be resubmitted in approximately November, 1990 and include statistical data which would provide the past track record of City Council's approval of the Finance Committee's recommendations. If you concur, I will resubmit the request for advice in November.

It is my understanding that due to the recent receipt of your opinion and this request for reconsideration, that the members of the Finance Committee will not be penalized for failure to file their form 721 on January 31, 1990. If in fact, you determine that they need to file Form 721, there will be a two-week grace period granted in which to file. It is my further understanding that you will attempt to promptly respond to this request for reconsideration.

Thank you for our continued assistance and cooperation.

Very truly yours,



Carol A. Korade  
City Attorney

cc: Vince Kelly, Finance Committee Member  
Art McKee, Finance Committee Member  
Don Roberts, Finance Committee Member  
Gary L. Thomas, Finance Committee Member  
John Barni, Sr., Finance Committee Member  
Diane Felsch, City Clerk  
Zenda James, Finance Director  
Bill Norton, City Manager